

Implementing AB3x 16 (Trigger Bill)
March 17, 2009 Public Hearing
Treasurer's Office Staff Report

AB3X 16 requires the State Treasurer and Director of Finance to determine how much of certain federal funds qualify as an offset against General Fund expenditures. If they determine by April 1 that the offsets are equal to \$10 billion or more, current law:

- Requires that personal income tax rates be reduced for every income class, and
- Facilitates an increase in budget-year expenditures in four broad program areas: social services, health, judicial and university systems.

The bill appears to afford the Treasurer and Director latitude when fulfilling the administrative requirements of AB3X 16. This report includes background on the bill and a discussion of the policy issues associated with making the determination.

Background

AB3X 16 requires the Treasurer and the Finance Director to determine whether federal legislation:

- Has been enacted that will make available, by June 30, 2010, which
- Provides additional federal funds that may be used to offset not less than \$10 billion in General Fund expenditures.

If the Treasurer and Director determine that sufficient federal funds will be made available, the Director notifies the Joint Legislative Budget Committee and the Controller of the determination.

Control Section 8.25 of SB3X 1 authorizes the Director of Finance to reduce any General Fund items of appropriation due to the receipt and expenditure of federal funds associated with economic stimulus funds.

Control Section 8.30 of the same bill authorizes the State Controller to increase expenditures listed in Figure 1, below.

SB3X 3 provides for a tax rate surcharge on all income tax rates. The legislation provides for a 0.125 percent surcharge if the Treasurer and Director determine by April 1 that \$10 billion in federal funds will be available for offsetting General Fund expenditures. Otherwise, the surcharge rate is 0.25 percent.

Estimates of the Amount of Qualifying Offsets. Since the Governor signed the trigger legislation, both the Department of Finance and Legislative Analyst’s Office have reviewed federal legislation to identify federal fund offsets of General Fund expenditures.

Figure 1
Changes in Spending Pursuant to Trigger
Dollars in Millions

Social Services

Department of Social Services, SSI/SSP grants,	\$ 267.8
Department of Social Services, CalWORKs grants	146.9
Department of Social Services, IHSS	78.0

Health Care

Department of Health Care Services, Optional Services	129.6
Department of Health Care Services, Safety Net Pool funds	54.0

Judicial

Judicial Branch, Trial Courts	100.0
Judicial Branch, New Judges	71.4

Universities

University of California	50.0
California State University	<u>50.0</u>

Total	\$947.7
--------------	----------------

This is a particularly difficult task, as the conditions under which the State might use additional federal funds are not fully known. In some circumstances, federal regulations for drawing down federal funds have not been promulgated. Some federal funds are available by competitive application, and awards have not been made. Moreover, State departments and interested parties have not completed their analyses of which federal allocations might be appropriately used to offset State General Fund expenditures. As the nature of the federal allocations becomes more settled, the assessment of offsets may evolve. Nevertheless, to facilitate review and comment on the trigger, the following assessments have been made on a tentative basis:

- ***The Department of Finance Equates “Expenditure” with “Enacted Appropriation.”*** The department has interpreted the term “general fund expenditure” to mean an “enacted appropriation” for purposes of implementing AB3X 16. Using this definition, and assuming the Legislature will approve statutory changes to qualify the State for certain federal health reimbursements, Finance estimates there are \$8.2 billion in qualifying federal fund offsets.

- ***The Legislative Analyst’s “Best Estimate.”*** The Analyst has made an \$8.0 billion “best estimate” of qualifying federal fund offsets. This estimate does not appear to include any offsets for K-14 school funding.

The Treasurer’s Office retained an independent consultant, Sjoberg/Evashenk, to help the Treasurer assess the estimates by Finance and the Analyst. The consultant found the methodology and assessments to be thorough.

Analysis

1. Legislative Intent

The Legislature considered the trigger’s statutory changes as part of its budget deliberations in January and February of 2009. AB3x 16 did not go through the policy and fiscal committee process, and was not subject to a public hearing. Because of the expedited nature of the budget deliberations, the public record on the Legislature’s intent is extremely limited. The statute contains no statements of legislative intent.

2. The Statute Cannot Be Implemented without Interpretation

AB3X 16 requires the Treasurer and Finance Director to determine whether “additional federal funds ...may be used to offset not less than ... \$10 billion in General Fund expenditures.” According to DOF’s budget glossary, an “expenditure” is either (a) an actual cash disbursement or (b) the amount of an appropriation used for goods and services ordered. In either case, a series of expenditures may total \$10 billion only after State entities take an action.

However, if the trigger statute requires an assessment of whether the State will spend \$10 billion during the 2008-09 and 2009-10 fiscal years, then the bill would appear to require the Treasurer and Director to base their estimate on future legislative and administrative actions. None of the relevant statutes provide guidance about how the Treasurer and Director are to make this estimate.

3. How Broad Is the Administrative Discretion?

Because the Treasurer and Director must exercise some judgments about how to make the determination provided for in AB3X 16, they may wish to consider the breadth of their administrative discretion, including:

- To what extent can they consider future developments or actions? Specifically, state, local and federal fiscal conditions will continue to evolve through June 30, 2010. Under what circumstances can the trigger determination anticipate these changes? When making the trigger determination can the Treasurer and Director anticipate an erosion of the State’s revenue condition? Can they assume administrative action, such as successful departmental applications for federal stimulus funds? Can they assume legislative action to help facilitate the qualification of federal stimulus funds?

- To what extent can they consider as an offset those additional federal funds already assumed in the State budget? AB3X 16 authorizes the Treasurer and Director to offset additional federal funds against State appropriations. If the new funds – that is, funds associated with the federal stimulus package – are already accounted for in the 2009 budget, can those funds be part of the “offset” determination?

4. Fiduciary Responsibilities

In meeting their various statewide responsibilities, the Treasurer and Director are required or expected to meet certain prudential and fiduciary standards. These standards may also apply when they exercise their judgment in making the trigger determination. If that is the case, they can be expected to take such considerations into account in deciding whether or not to make a determination which would erode the state’s fiscal condition (in the budget year or beyond).